

IN THE CLAIMS

Please amend the claims as follows. The following listing of claims will replace all prior versions, and listings, of claims in the application.

1. (Original) A tree seat apparatus, comprising:
a frame comprising a seat support member,
an attachment member for attaching the frame to a tree, and
a seat cushion for operatively attaching to said seat support member, said seat cushion comprising an envelope with a gas sealed therein; and
a reinforcing member situated below said envelope;
wherein said envelope extends over an area which substantially covers said reinforcing member.
2. (Original) The tree seat apparatus of claim 1, wherein the seat cushion includes at least two adjacent chambers, and wherein each of the chambers is independently sealed.
3. (Original) The tree seat apparatus of claim 1, wherein the envelope has a flexible foam therein.
4. (Original) The tree seat apparatus of claim 1, wherein the reinforcing member comprises a layer of foam material below the envelope.

5. (Original) The tree seat apparatus of claim 4, wherein the seat cushion further comprises a top layer of foam material above the envelope, and wherein the foam material of the reinforcing member is denser than the foam material of the top foam layer.

6. (Currently Amended) A seat cushion for use with a tree seat apparatus, said seat cushion comprising:

a sealed envelope containing an entrapped gas;

a layer of flexible, resilient foam above the sealed envelope and defining a top foam layer;

a reinforcing member below the sealed envelope, said reinforcing member comprising a material which is denser than the foam of the top foam layer; and

a protective outer layer ~~evening~~ substantially surrounding and enclosing the sealed envelope, the top foam layer, and the reinforcing member;

wherein said envelope extends over an area which substantially covers said reinforcing member.

7. (Original) The seat cushion of claim 6, wherein said outer layer comprises a fabric material.

8. (Original) The seat cushion of claim 6, wherein the reinforcing member comprises a resilient closed cell foam.

9. (Original) The seat cushion of claim 6, wherein the sealed envelope comprises at least two separate chambers.

10. (Original) The seat cushion of claim 8, wherein the sealed envelope comprises at least two separate chambers.

11. (Original) The tree seat apparatus of claim 6, wherein the sealed envelope has a flexible resilient foam material therein.

12. (Currently Amended) A tree seat apparatus, comprising

- a frame comprising a seat support member,
- an attachment member which is operatively connectable to the frame for removably attaching the frame to a tree, and
- a seat cushion for operatively attaching to said seat support member and comprising:
 - a sealed envelope containing an entrapped gas;
 - a layer of flexible, resilient foam above the sealed envelope and defining a top foam layer;
 - a reinforcing member comprising a foam material, said reinforcing member being situated below the sealed envelope and formed from a foam which is denser than the top foam layer; and
 - a protective outer layer covering the reinforcing member, the sealed envelope and the top foam layer;

wherein the reinforcing member is more than twice as thick as the outer layer.

13. (Original) The tree seat apparatus of claim 12, wherein the seat cushion outer layer comprises a fabric material.

14. (Original) The tree seat apparatus of claim 12, wherein the seat cushion outer layer comprises a water-resistant liner.
15. (Original) The tree seat apparatus of claim 12, wherein the attachment member comprises at least one restraining device selected from the group consisting of belts, cables and chains.
16. (Original) The tree seat of claim 12, wherein the sealed envelope comprises at least two separate chambers.
17. (Original) The tree seat apparatus of claim 1, wherein the envelope is substantially permanently sealed.
18. (Original) ~~The tree seat apparatus~~ seat cushion of claim 6, wherein the envelope is substantially permanently sealed.
19. [Canceled]
20. (New) The tree seat apparatus of claim 6, wherein the sealed envelope is substantially horizontally coextensive with the top foam layer.
21. (New) The tree seat apparatus of claim 6, wherein the reinforcing member is more than twice as thick as the outer layer.
22. (New) A seat cushion for use with an outdoor seat apparatus, said seat cushion comprising:
a sealed envelope containing an entrapped gas;

a layer of flexible, resilient foam disposed above the sealed envelope and defining a top foam layer;

a reinforcing member below the sealed envelope, said reinforcing member formed from a flexible, resilient foam which is denser than the foam of the top foam layer; and

a protective outer layer substantially surrounding and enclosing the sealed envelope, the top foam layer, and the reinforcing member;

wherein the sealed envelope, the reinforcing member and the top foam layer are all substantially horizontally coextensive with one another.

23. (New) The seat cushion of claim 22, wherein the reinforcing member is more than twice as thick as the outer layer.

DISCUSSION

Upon entry of the present amendment, Claims 1 through 18 and 20-23 remain in the application, and of these, Claims 1, 6, 12, and 22 are independent. The above-identified Office Action has been reviewed, the references carefully considered, and the Examiner's comments carefully weighed. In view thereof, the present Amendment is submitted. It is contended that by the present amendment, all bases of rejection set forth in the Office Action have been traversed and overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Section 102 Issues

In the above-identified Office Action, the Examiner rejected claims 6, 7, 9, and 11 under 35 U.S.C. 102 as anticipated by Matsler et al.

The Examiner asserts that in his view, Matsler discloses the invention substantially as claimed, including a reinforcing foam base member 29.

Applicant disagrees with, and traverses the rejection of claims 6, 7, 9, and 11 under 35 U.S.C. 102 as anticipated by Matsler et al., and requests reconsideration and withdrawal of this ground of rejection.

The Standard for Anticipation

In the case of *Motorola, Inc. v. Interdigital Technology Corp.*, 121 F. 3d 1461 (CAFC 1997), the Court of Appeals for the Federal Circuit stated:

"For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art (citation omitted). 'The (prior art) reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it' (citations omitted). Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there."

The above-quoted passage is consistent with many previous cases of the Federal Circuit and with MPEP 2131, which reiterate the rule that in order to anticipate a claim, a reference must teach every element of the claim.

Applicant respectfully submits that Matsler does not disclose each and every element of applicant's claimed invention. Matsler fails to teach, disclose or suggest a reinforcing member as claimed by applicant. The thin layer 29 shown below the air cell module of Matsler et al. is described by the reference as the bottom of the base 11 (Column 3, lines 54-55). As such, the layer 29 of Matsler constitutes part of an outer cover for the cushion, analogous to the lowermost layer of applicants protective outer layer. The Matsler reference is devoid of any component comparable to applicant's claimed reinforcing member, and as a result, Matsler cannot properly be characterized as anticipating applicant's invention.

Applicant therefore requests reconsideration and withdrawal of the Examiner's rejection of claims 1, 6, 7, 9 and 11 under section 102.

Section 103 Issues

Also in the above-identified Office Action, the Examiner rejected claims 8 and 10 under 35 U.S.C. 103 as anticipated by Matsler et al. in view of Carilli.

The applicant traverses this ground of rejection, and respectfully submits that no reasonable combination of the teachings of Matsler and Carilli would produce applicant's invention, as claimed. Further, while Carilli teaches plural foam layers in a seat cushion, in which the layers are formed from foams having different densities, there is no teaching or suggestion in Carilli to include a sealed cushion as part of his cushion. Indeed, including a sealed envelope in the seat cushion of Carilli would be counter to the teachings of the reference, which is provided as a high-impact seat, such as for a car or boat. (Carilli, col. 1, lines 20-25). In a high-impact environment, it is possible that a sealed envelope such as that taught by applicant could burst, with detrimental consequences to the seat cushion assembly.

A person constructing a high-impact seat would not look to the art of wheelchair cushions. (Matsler, col. 1, lines 5-10).

The Examiner also rejected claims 1-5 and 12-19 under 35 U.S.C. 103 as anticipated by Brummer in view of Matsler et al. and Carilli.

The applicant traverses this ground of rejection, and respectfully submits that no

reasonable combination of the teachings of Brunner, Matsler and Carilli would produce applicant's invention, as claimed.

Applicant points out that claim 1 requires that the sealed envelope extends over an area which substantially covers the reinforcing member. The total combination of claim 1, including the limitation that the envelope extends over an area which substantially covers said reinforcing member is not taught, suggested, nor rendered obvious by the cited references, considered individually or in combination.

Claims 2-5 depend directly or indirectly from claim 1, and therefore incorporate all of the limitations of claim 1 therein. Further, none of the references teach a sealed envelope with a foam therein, as claimed in claim 3.

Applicant also traverses the Examiner's rejection of claim 12. None of the references of record teach the total combination of claim 12, whether considered individually or in any reasonable combination.

Claims 13-16 depend directly or indirectly from claim 12, and therefore incorporate all of the limitations of claim 12 therein.

Applicant further points out that as presently amended, claim 18 depends from claim 6, and is directed to a seat cushion.

Applicant disagrees with, and traverses the Examiner's rejections under 35 USC 103, and requests reconsideration and withdrawal thereof.

Claim Amendments

In the present amendment, applicant has amended claims 6 and 12, has canceled claim 19, and has added new claims 20-23.

Claim 6 has been amended to add the limitations that envelope extends over an area which substantially covers the reinforcing member, and that the outer layer substantially surrounds and encloses the sealed envelope, the top foam layer, and the reinforcing member.

Claim 12 has been amended to add a limitation that the reinforcing member is more than twice the thickness of the outer layer.